

DEPARTMENT OF COMMERCE

National Technical Information Service

15 CFR Part 1110

Docket Number: [140321001-4001-01]

RIN: 0692-AA21

Temporary Certification Program for Access to the Death Master File

AGENCY: National Technical Information Service, U.S. Department of Commerce.

ACTION: Interim Final Rule.

SUMMARY: The National Technical Information Service is issuing this interim final rule to establish a certification program under which persons may obtain immediate access to the publicly available Death Master File (DMF), pursuant to Section 203 of the Bipartisan Budget Act of 2013 (Act). This rule sets forth temporary requirements to become a certified person, provides that certified persons will be subject to periodic and unscheduled audits, and provides for the imposition of penalty upon any person who discloses or uses DMF information in a

manner not in accordance with the Act. This rule also provides for the charging of fees for the certification program.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments are due on this interim final rule on or before 5:00pm Eastern time [INSERT DATE 30 DAYS FROM THE PUBLICATION DATE].

ADDRESSES: National Technical Information Service, 5301 Shawnee Road, Alexandria, VA 22312. Written comments must be submitted to John Hounsell by email at jhounsell@ntis.gov, or in paper form at NTIS, 5301 Shawnee Road, Alexandria, VA 22312.

FOR FURTHER INFORMATION CONTACT: John Hounsell at jhounsell@ntis.gov, by mail at NTIS, 5301 Shawnee Road, Alexandria, VA 22312, or by telephone at 703-605-6184. Information about the DMF made available to the public by NTIS may be found at <https://dmf.ntis.gov>.

SUPPLEMENTARY INFORMATION:

Background

This interim final rule establishes a temporary certification program for persons who seek access to the Death Master File (DMF), as defined in Section 203 of the Bipartisan Budget Act of 2013

(Pub. L. No. 113-67)(Act). The Act prohibits disclosure of DMF information during the three-calendar-year period following an individual's death unless the person requesting the information has been certified under a program established by the Secretary of Commerce. The Act directs the Secretary of Commerce to establish a certification program for such access to the DMF. Section 203, "Restriction on Access to the Death Master File," requires the establishment of a fee-based certification program for allowable uses of DMF data for any deceased individual within three calendar years of the individual's death. Authority to carry out Section 203 has been delegated by the Secretary of Commerce to the Director, National Technical Information Service (NTIS).

NTIS published a Request for Information and Advance Notice of Public Meeting on the Certification Program for Access to the Death Master File (RFI) at 79 FR 11735, available at <http://www.gpo.gov/fdsys/pkg/FR-2014-03-03/pdf/2014-04584.pdf>. The public meeting was held March 4, 2014, from 9:00 am to 12:00 pm Eastern time at the United States Patent and Trademark Office, Madison Building West, 600 Dulany Street, Alexandria, VA 22314. The public meeting was also webcast. Written comments received in response to the RFI, and a transcription of oral comments made and comments submitted via webcast at the public meeting, may be viewed at <http://dmf.ntis.gov/>.

In response to the RFI, NTIS received approximately 70 written comments, as well as oral and webcast comments at the public meeting. Among the commenters, 12 were insurance companies, 9 were industry associations, 6 were banks or credit services, 4 were pension funds,

approximately 20 were various types of service providers, and the rest were individuals, including 8 genealogists, 6 investigators and 3 medical researchers. Among the insurance companies and service providers, the most frequent comment received was that without continued access to the DMF, these organizations would be unable to prevent various types of fraud. For example, life insurance companies commented that they use the DMF to ensure that they are paying a valid claim to proper beneficiaries. Other commenters stressed that their continued access to the DMF is necessary to prevent credit card fraud. Others commented that they require continued access to the DMF to complete timely research to locate legal heirs to estates and unclaimed property. In contrast, others commented that the nature of their use of the DMF was such that the Act should not be applied to them in accessing the DMF; however, the Act does not provide for exceptions.

Section 203, “Restriction on Access to the Death Master File”

Section 203(a) of the Act directs that the Secretary of Commerce (Secretary) shall not disclose to any person information contained on the Death Master File with respect to any deceased individual at any time during the three-calendar-year period beginning on the date of the individual's death, unless such person is certified under a program established under the Act.

Section 203(b)(1) of the Act directs the Secretary to establish a program to certify persons who are eligible to access the information contained on the Death Master File, and to perform periodic and unscheduled audits of certified persons to determine compliance with the program.

Under Section 203(b)(2) of the Act, a person shall not be certified under the program unless such person certifies that access to the information is appropriate because such person (A) has (i) a legitimate fraud prevention interest, or (ii) a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty, and (B) has systems, facilities, and procedures in place to safeguard such information, and experience in maintaining the confidentiality, security, and appropriate use of such information, pursuant to requirements similar to the requirements of section 6103(p)(4) of the Internal Revenue Code of 1986 (IRC), and (C) agrees to satisfy the requirements of such section 6103(p)(4) as if such section applied to such person.

Section 203(b)(3)(A) of the Act directs the Secretary to charge fees to recover all costs of evaluating applications for certification and auditing, inspecting, and monitoring certified persons under the program. Section 203(b)(3)(B) of the Act requires the Secretary to report annually to the Congress on the fees collected and the cost of administering the program.

Section 203(c)(1) of the Act provides that any certified person who receives DMF information as defined in Section 203(a), and who (A) discloses such information to any person other than a person meeting the requirements of subparagraphs (A), (B), and (C) of subsection (b)(2), or (B) discloses such information to any person who uses the information for any purpose not listed under subsection (b)(2)(A) or who further discloses the information to a person who does not meet such requirements, or (C) uses any such information for any purpose not listed under subsection (b)(2)(A), shall pay a penalty of \$1,000 for each such disclosure or use, as shall any

person to whom such information is disclosed who further discloses or uses such information as described in the preceding subparagraphs. Under Section 203(c)(2), there is a \$250,000 limit on the total penalty that can be imposed on any person for any calendar year, unless the Secretary determines the violations to have been willful or intentional.

Section 203(d) of the Act defines the term “Death Master File” to mean information on the name, social security account number, date of birth, and date of death of deceased individuals maintained by the Commissioner of Social Security, other than information that was provided to such Commissioner under section 205(r) of the Social Security Act (42 U.S.C. 405(r)).

Under Section 203(e)(1) of the Act, the Freedom of Information Act (FOIA) shall not apply to compel any Federal agency to disclose information contained on the Death Master File with respect to any deceased individual at any time during the three-calendar-year period beginning on the date of the individual's death to anyone other than a certified person. Section 203(e)(2) of the Act provides that Section 203 shall be considered a statute under FOIA.

Under Section 203(f) of the Act, Section 203 takes effect 90 days after the date of the enactment, while Section 203(e) (the FOIA provision) takes effect upon enactment.

As noted in the RFI, several Members of Congress described their understanding of the purpose and meaning of Section 203 during Congressional debate on the Joint Resolution which became the Act, and citations to those Member statements are provided in the RFI. The RFI also

provides background on the component of the DMF covered by Section 203, which originates from the Social Security Administration.

In addition, to comply with the certification program requirements established under this interim final rule, certified persons who receive Limited Access DMF (as defined in the rule) may not themselves redistribute such information in an unrestricted manner, including over the Internet.

The interim final rule defines “Persons” to include corporations, companies, associations, firms, partnerships, societies, and other stock companies, as well as individuals, but does not include Executive departments or agencies. Executive departments or agencies will not have to complete the Certification Form as set forth in the rule. Those working on behalf of and authorized by Executive departments or agencies may access the Limited Access DMF through that sponsoring Executive department or agency. If, however, an Executive department or agency wishes those working on its behalf to access the Limited Access DMF directly from NTIS, then those working on behalf of that Executive department or agency will be required to complete and submit the Certification Form as set forth in the rule and enter into a subscription agreement with NTIS in order to access the Limited Access DMF.

This interim final rule contains general provisions regarding implementation of the Act and establishes the interim procedure for becoming a certified person. These general provisions and the interim procedure are effective immediately. Due to the extremely important issues raised by potential misuse of the DMF, including concerns about availability of sensitive information transmitted across the Internet, and the statutory deadline for establishing a certification program,

NTIS is issuing this interim final rule. NTIS plans to continue to refine the certification program, consistent with the Act through a separate notice and comment rulemaking process, to be initiated as soon as possible.

Additional Information

Executive Order 12866

This rule has been determined to be significant of Executive Order 12866.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Administrative Procedure Act

NTIS finds good cause to waive the notice and comment provisions in 5 U.S.C 553(b)(B) because failure to do so would be contrary to the public interest. Under Section 203 of the Act, on March 26, 2014, the Secretary must cease any and all disclosure of DMF data within three calendar years of a person's death unless the recipient of the data is certified. Many of the current subscribers of the DMF data, such as insurance companies and credit card companies, use the data for fraud prevention purposes. If this rule is not effective by March 26, 2014, these

companies will no longer be able to receive data necessary to prevent fraud in their industry. At the public meeting NTIS held on March 4, commenters explained why they thought their use of the DMF was legitimate under the Act, and emphasized the necessity of uninterrupted access to the DMF for their business. Comments were also received regarding the content of a certification form that might be used in conjunction with a certification program under the Act. Given the statutory deadline associated with implementing the Act, it was not possible to address all of the arguments and comments presented before promulgating this interim final rule. Waiving the notice and comment requirements of the Administrative Procedure Act to make this rule effective immediately will allow entities who use the DMF for legitimate purposes, as defined in the Act, to continue to access the data through certification of their compliance with the requirements of Section 203.

Regulatory Flexibility Act

Because notice and comment are not required under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable. As such, a regulatory flexibility analysis is not required, and none has been prepared.

Paperwork Reduction Act

This interim final rule contains a collection of information requirement subject to the Paperwork Reduction Act and which has been approved by the Office of Management and Budget (OMB) under Control Number [INSERT OMB CONTROL NUMBER]. This interim final rule requires that applicants certify their compliance with the requirements of Section 203 of the Act.

This interim final rule contains a collection of information requirement subject to the Paperwork Reduction Act and which has been approved by the Office of Management and Budget (OMB) under Control Number 0692-0013. This interim final rule requires that applicants certify their compliance with the requirements of Section 203 of the Act.

Notwithstanding any other provision of the law, no person is required to, nor shall any person be subject to penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

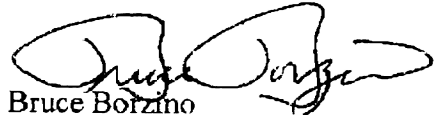
National Environmental Policy Act

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

List of Subjects in 15 CFR Part 1110

Certification program; Fees; Imposition of Penalty.

Dated: *21 March 2014*



Bruce Borzino
Director

For reasons set forth in the preamble, the National Technical Information Service amends 15 CFR chapter XI to add a new part 1110, as follows:

PART 1110 - CERTIFICATION PROGRAM FOR ACCESS TO THE DEATH MASTER FILE

Subpart A – General

Sec.

§1110.1 Description of rule; applicability.

§1110.2 Definitions used in this part.

Subpart B – Temporary Certification Program

§1110.100 Scope.

§1110.101 Submission of Certification.

§1110.102 Certification.

Subpart C – Penalties and Audits

§1110.200 Imposition of Penalty.

§1110.201 Audits.

Subpart D – Fees

§1110.300 Fees.

AUTHORITY: Pub. L. 113-67, § 203.

Subpart A – General

§1110.1 Description of rule; applicability.

- (a) The Bipartisan Budget Act of 2013 (Pub. L. No. 113-67), Section 203, provides for the establishment of a fee-based certification program for persons who seek access to the Death Master File (DMF), and prohibits disclosure of DMF information for an individual during the three-calendar-year period following the individual's death, unless the person requesting the information has been certified.
- (b) This part is applicable to any Person seeking access to a Limited Access DMF, as defined in this part.

§1110.2 Definitions used in this part.

The following definitions are applicable to this part:

Act. The Bipartisan Budget Act of 2013 (Pub. L. No. 113-67).

Certified Person. A Person who has been certified under the certification program established under this part and is eligible to access the Limited Access DMF.

DMF. Death Master File.

Death Master File. Information on the name, social security account number, date of birth, and date of death of deceased individuals maintained by the Commissioner of Social Security, other than information that was provided to such Commissioner under section 205(r) of the Social Security Act (42 U.S.C. 405(r)).

Limited Access DMF. The DMF product made available by NTIS which includes DMF with respect to any deceased individual at any time during the three-calendar-year period beginning on the date of the individual's death.

NTIS. The National Technical Information Service, United States Department of Commerce.

Open Access DMF. The DMF product made available by NTIS which does not include DMF with respect to any deceased individual at any time during the three-calendar-year period beginning on the date of the individual's death.

Person. This term includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

Subpart B – Certification Program

§1110.100 Scope.

- (a) Any Person desiring access to the Limited Access DMF must certify in accordance with this part. Upon acceptance of a Person's certification by NTIS, such Person will be a Certified Person, will be entered into the publicly available list of Certified Persons maintained by NTIS, and will be eligible to access the Limited Access DMF made available by NTIS through subscription.

- (b) Certification under this part is not required for any Person to access the Open Access DMF made available by NTIS; however, a Certified Person may also access the Open Access DMF.

§1110.101 Submission of Certification.

In order to become certified under the certification program established under this part, a Person must submit a completed certification statement, using the form NTIS FM161 with OMB Control Number [INSERT OMB CONTROL NUMBER], and its accompanying instructions at <https://dmf.ntis.gov>.

§1110.102 Certification.

In order to be certified to be eligible to access the Limited Access DMF under the certification program established under this part, a Person shall certify, in the manner set forth in this part and pursuant to section 1001 of title 18, United States Code, that

- (a) such Person's access to the Limited Access DMF is appropriate because
- (i) such Person has a legitimate fraud prevention interest, or has a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty, and shall specify the basis for so certifying;
 - (ii) such Person has systems, facilities, and procedures in place to safeguard the accessed information, and experience in maintaining the confidentiality, security,

and appropriate use of accessed information, pursuant to requirements similar to the requirements of section 6103(p)(4) of the Internal Revenue Code of 1986;

(iii) such Person agrees to satisfy the requirements of such section 6103(p)(4) as if such section applied to such Person;

(iv) such Person shall not, with respect to DMF of any deceased individual at any time during the three-calendar-year period beginning on the date of the individual's death:

(A) disclose such deceased individual's DMF to any person other than a person who meets the requirements of §1110.102(a)(i)-(iii) of this part;

(B) disclose such deceased individual's DMF to any person who uses the information for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty;

(C) disclose such deceased individual's DMF to any person who further discloses the information to any person other than a person who meets the requirements of §1110.102(a)(i)-(iii) of this part; or

(D) use any such deceased individual's DMF for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty,

and shall state whether such Person intends to disclose such deceased individual's DMF to any person, and if so, shall state the manner of such disclosure and how such Person will ensure compliance with §1110.102(a)(iv)(A) – (c) of this part.

Subpart C – Penalties and Audits

§1110.200 Imposition of Penalty.

- (a) General. Any Person certified under this part who receives DMF including information about any deceased individual at any time during the three-calendar-year period beginning on the date of the individual's death, and who during such three-calendar-year period:
- (i) discloses such deceased individual's DMF information to any person other than a person who meets the requirements of §1110.102(a)(i)-(iii) of this part;
 - (ii) discloses such deceased individual's DMF to any person who uses the information for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty;
 - (iii) discloses such deceased individual's DMF to any person who further discloses the information to any person other than a person who meets the requirements of §1110.102(a)(i)-(iii) of this part; or
 - (iv) uses any such deceased individual's DMF for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty
- and any Person to whom such information is disclosed, whether or not such Person is certified under this part, who further discloses or uses such information as described in §1110.200(a)(i)-(iv) of this part shall pay to the General Fund of the United States Department of the Treasury a penalty of \$1,000 for each such disclosure or use.

(b) **Limitation on Penalty.** The total amount of the penalty imposed under this part on any Person for any calendar year shall not exceed \$250,000.

§1110.201 Audits.

(a) **General.** Any Person certified under this part shall, as a condition of certification, agree to be subject to audit by NTIS to determine the compliance by such Person with the requirements of this part. NTIS may conduct periodic and unscheduled audits of the systems, facilities, and procedures of any Certified Person relating to such Certified Person's access to, and use and distribution of, Limited Access DMF, during regular business hours.

Subpart D - Fees

§1110.300 Fees.

Fees for the costs associated with evaluating applications for certification of Certified Persons under this part are as follows:

Processing of Certification Form and

maintenance of Registry of Certified Persons \$200.00